

**UNITED STATES DISTRICT COURT**  
EASTERN DISTRICT OF CALIFORNIA

DAVID ANDREWS,

Petitioner,

v.

C. KOENIG,

Respondent.

Case No. 1:21-cv-00168-DAD-EPG-HC

ORDER DENYING PETITIONER'S  
REQUEST FOR THE CLERK'S RECORD

(ECF No. 49)

Petitioner David Andrews is a state prisoner who proceeded *pro se* and *in forma pauperis* with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. On August 1, 2022, the Court granted Respondent's motion to dismiss, dismissed the petition for writ of habeas corpus, and declined to issue a certificate of appealability. (ECF No. 42.) On August 26, 2022, Petitioner filed a notice of appeal. (ECF No. 46.)

On August 26, 2022, the Court received the instant written request for the clerk's record. (ECF No. 49.) In support of the motion, Petitioner cites to Ninth Circuit Rule 30-3, which provides:

In cases involving appeals by prisoners not represented by counsel, the clerk of the district court shall, within 21 days from the receipt of the prisoner's written request, forward to the prisoner copies of the documents comprising the excerpts of record, *so that the prisoner can prepare the briefs on appeal*. If the prisoner was granted leave to proceed in forma pauperis at the district court or on appeal, the copies will be produced at no charge to the prisoner.

9th Cir. R. 30-3 (emphasis added).

1 The purpose of Ninth Circuit Rule 30-3 is to provide “copies of the documents  
2 comprising the excerpts of record, *so that the prisoner can prepare the briefs on appeal.*” 9th  
3 Cir. R. 30-3 (emphasis added). With respect to habeas corpus proceedings, the Ninth Circuit  
4 rules provide that “[a]ppellants shall brief only issues certified by the district court or the court of  
5 appeals[.]” 9th Cir. R. 22-1(e). See Miller-El v. Cockrell, 537 U.S. 322, 335–36 (2003) (“As  
6 mandated by federal statute, a state prisoner seeking a writ of habeas corpus has no absolute  
7 entitlement to appeal a district court’s denial of his petition. Before an appeal may be  
8 entertained, a prisoner who was denied habeas relief in the district court must first seek  
9 and obtain a [certificate of appealability] from a circuit justice or judge.”). Here, this Court  
10 declined to issue a certificate of appealability, (ECF No. 42), and there is nothing in the record  
11 indicating that the Ninth Circuit has certified any issues for appeal. As there are currently no  
12 issues certified by the district court or the court of appeals, Petitioner does not have any briefs on  
13 appeal to prepare.

14 Accordingly, Petitioner’s request for the clerk’s record (ECF No. 49) is DENIED.

15  
16 IT IS SO ORDERED.

17 Dated: **September 12, 2022**

18 /s/ Eric P. Grogan  
UNITED STATES MAGISTRATE JUDGE